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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT NO. 2

Dated as of May 1, 1975

Between

BURLINGTON NORTHERN INC.,

as Lessee,

and

FIRST NATIONAL STATE BANK OF NEW JERSEY, as Trustee
under a Trust Agreement dated as of May 1, 1975,
with Borg-Warner Equities Corporation and Puget
Sound National Bank,

as Lessor.

LEASE OF RAILROAD EQUIPMENT No. 2 dated as of May 1, 1975, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), and FIRST NATIONAL STATE BANK OF NEW JERSEY, a national banking association, acting as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Borg-Warner Equities Corporation and Puget Sound National Bank (said corporation and said bank being hereinafter called the Beneficiaries).

WHEREAS the Lessor is entering into a Conditional Sale Agreement No. 2 dated as of the date hereof with General Electric Company, a New York corporation (hereinafter called the Builder) (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to First National Bank of Minneapolis, a national banking association, acting as agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessor and the parties named in Schedule A thereto (said national banking association, as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS the Lessor is assigning certain of its interests in this Lease to the Vendor pursuant to an Assignment of Lease and Agreement No. 2 dated as of the date hereof; and

WHEREAS the Lessee is entering into a Lessee's Consent and Agreement No. 2 dated as of the date hereof (hereinafter called the Consent) consenting to said assignment of the Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor or otherwise, whether under this Lease, the Security Documentation or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the

Security Documentation. Upon delivery of each Unit, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim and 30 consecutive semiannual payments payable, in arrears, on March 8 and September 8 in each year, commencing September 8, 1975. The interim rental payment payable on September 8, 1975, shall be in an amount equal to .026902% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to the date of such payment. The 30 semiannual rental payments shall each be in an amount equal to the percentage of the Purchase Price of each Unit then subject to this Lease set forth in Schedule B hereto opposite the applicable rental payment date.

The rental payments hereinbefore set forth are subject to adjustment pursuant to the Adjustment Agreement dated as of the date hereof between the Lessee and the Beneficiaries (hereinafter called the Adjustment Agreement, a copy of which is annexed hereto as Annex I); provided, however, that no such adjustment shall reduce the amount of rentals below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation. If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Minneapolis, Minnesota, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal

office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in federal or other immediately available funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to

and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in clause (iii) of § 15 hereof in respect of such statement. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiaries) to the Lessor and the Beneficiaries for collection or other charges and will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiaries) to the Lessor and the Beneficiaries with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiaries in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Beneficiaries have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with

or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or upon the Beneficiaries solely by reason of their interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiaries or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Beneficiaries, adversely affect the title, property or rights of the Lessor and the Beneficiaries hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation, or the Beneficiaries shall become obligated to make payment to the Lessor pursuant to any correlative provision of the Trust Agreement, not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiaries to fulfill completely their obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross

receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor promptly upon demand for the amount of such taxes, fees and charges.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition; pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Beneficiaries, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiaries of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiaries reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (or, in the event of a Casualty Occurrence during the period the Units are being returned pursuant to § 14 hereof, on a date 60 days after such Casualty Occurrence) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below.

Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage</u>
September 8, 1975	104.4961%
March 8, 1976	110.1647
September 8, 1976	113.6080
March 8, 1977	115.3587
September 8, 1977	117.5242
March 8, 1978	119.6656
September 8, 1978	115.0638
March 8, 1979	116.7187
September 8, 1979	118.0875
March 8, 1980	117.1975
September 8, 1980	109.2336
March 8, 1981	107.3854
September 8, 1981	105.4941
March 8, 1982	103.3696
September 8, 1982	94.4307
March 8, 1983	92.0493
September 8, 1983	89.5518
March 8, 1984	86.9256
September 8, 1984	84.1787
March 8, 1985	81.2988
September 8, 1985	78.3314
March 8, 1986	72.3834
September 8, 1986	66.2755
March 8, 1987	59.9899
September 8, 1987	53.6445
March 8, 1988	47.3074

<u>Date</u>	<u>Percentage</u>
September 8, 1988	40.8119%
March 8, 1989	34.1573
September 8, 1989	27.3370
March 8, 1990,	20.3703
September 8, 1990 and thereafter	15.0000

The Casualty Values hereinbefore set forth are subject to adjustment pursuant to the Adjustment Agreement, provided that no such adjustment shall reduce the Casualty Values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor). Any insurance proceeds (less expenses of collection) as the result of insurance carried by the Lessee or condemnation payments received by the Vendor in respect of Units suffering a Casualty Occurrence or refund of

Purchase Price by the Builder shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any other insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such insurance proceeds or condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Security Documentation, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. If an event of default has occurred under subparagraph (a) of Article 16 of the Security Documentation and the Lessor has exercised its right to cure such default as set forth therein, the Lessee shall cause to be furnished to the Vendor and the Lessor on the first day of each month thereafter to and including the month following the next succeeding interest payment date as set forth in Article 4 of the Security Documentation an accurate statement setting forth as at the first day of the preceding month the information described in clause (a) above and representing that all other units of Equipment are being maintained in accordance with the third paragraph of § 9 hereof. The Lessor and the Beneficiary shall have the

right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Beneficiary may request during the continuance of this Lease.

The Lessee will furnish the Lessor and the Vendor (i) as soon as available and in any event within 60 days after the end of the quarterly accounting periods in each fiscal year of the Lessee, (a) copies of the condensed balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of revenue, expense and income (forms CBS and RE&I as filed with the Interstate Commerce Commission or any form substituted therefor) of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; and (b) copies of the quarterly reports of the Lessee to its shareholders (ii) as soon as available and in any event within 120 days after the end of each fiscal year of the Lessee copies of the annual report to stockholders, including the balance sheet of the Lessee and of the related statements of income and retained earnings of the Lessee, and certified by the Lessee's independent public accountants; (iii) copies of the Lessee's annual report Form R-1 (or any form substituted therefor) filed with the Interstate Commerce Commission; and (iv) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce

from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees that, at its own cost and

expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

Any and all additions to any Unit (except any communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under the Security Documentation, the Finance Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, which-

ever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee

shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 5.59% per annum discount, computed semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over (y) the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 5.59% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent

that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof or pursuant to Article 16 of the Security Documentation, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for

insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor upon prior written consent of the Lessee. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 11 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

So long as the Lessee shall not be in default under this Lease and an event of default shall not have occurred and be continuing under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation, but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the

Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and an event of default shall not have occurred and be continuing under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or

transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Purchase Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or the first two extended terms of this Lease, as the case may be, elect to (a) extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or the then extended term, as the case may be, of this Lease, provided that no such extended term extends beyond September 8, 1993, at a "Fair Market Rental" payable, in arrears, in semiannual payments on March 8 and September 8 in each year of such extended term or (b) to purchase all, but not less than all, the Units covered by this Lease at the end of such original term or any such extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such original term or such extended term of this Lease.

Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the original term or the extended term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Value, as the case may be, of the Units, such amounts shall be determined

in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to

this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§ 15. Representations and Warranties; Opinion of Counsel. The Lessee represents and warrants for the benefit of the Lessor, the Beneficiaries and the Vendor that:

(i) the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation with adequate corporate power to enter into this Lease, the Consent and the Adjustment Agreement;

(ii) this Lease, the Consent and the Adjustment Agreement have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

(iii) prior to the delivery and acceptance of any Unit under this Lease, the Security Documentation (and any assignment thereof) and this Lease (and any assignment hereof) will have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and this Lease and no other filing, recording or deposit (or giving of notice) with any other federal, state

or local government is necessary in order to protect the interests of the Vendor or the Lessor under the Security Documentation or this Lease in and to the Units and this Lease in any state of the United States of America or in the District of Columbia or under this Lease in Canada or any Province thereof;

(iv) no approval is required from any public regulatory body with respect to the entering into or performance of this Lease, the Consent or the Adjustment Agreement;

(v) the entering into and performance of this Lease, the Consent or the Adjustment Agreement will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

(vi) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units;

(vii) at the time of the execution of this Lease, no litigation existed which materially adversely affected the financial condition of the Lessee;

(viii) at the time of the execution of this Lease, no material adverse change has occurred in the condition, financial or otherwise, of the Lessee since December 31, 1974; and

(ix) at the time of the execution of this Lease, no default exists under any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound.

On each Closing Date the Lessee will deliver to the Lessor counterparts of the written opinion of counsel

for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth in clauses (i), (ii), (iii), (iv), (v) and (vi) of the preceding paragraph.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 550 Broad Street, Newark, New Jersey 07102, with a copy to the Beneficiaries addressed to Borg-Warner Equities Corporation, One IBM Plaza, Chicago, Illinois 60611, Attention: Vice President--Leasing Division, and to Puget Sound National Bank, 1119 Pacific, Tacoma, Washington 98402, and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention: R. C. Burton, Jr., Assistant Vice President, Finance Planning,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Adjustment Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section

20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

§ 22. Immunities; No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Beneficiaries, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First National State Bank of New Jersey or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, or the Beneficiaries or on account of any representation, undertaking or agreement of the Lessor or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 23. Agreements for Benefit of Beneficiaries. All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9 and 10 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and any of the Beneficiaries' assigns under the Trust Agreement.

§ 24. Miscellaneous. The Lessee will cause to be furnished to the Vendor promptly after each Closing Date (as defined in the Security Documentation) a schedule, in such

[The Lessor and the Beneficiaries]

number of counterparts as shall be requested by the Vendor, the Lessor and the Beneficiaries showing the respective amounts of principal and interest payable on the Conditional Sale Indebtedness (as defined in the Security Documentation) on each Payment Date (as defined in the Security Documentation) and promptly after any Casualty Occurrence any such revised schedule required by Article 7 of the Security Documentation.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

BURLINGTON NORTHERN INC.,

by *Rw Downing*

~~Executive Vice President~~ CHAIRMAN

[Corporate Seal]

Attest:

Attest: 
Assistant Secretary

FIRST NATIONAL STATE BANK OF
NEW JERSEY, as Trustee,

by

Vice President

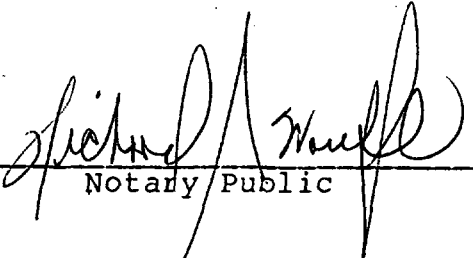
[Corporate Seal]

Attest:

Assistant Cashier

STATE OF MINNESOTA,)
) ss.:
COUNTY OF RAMSEY ,)

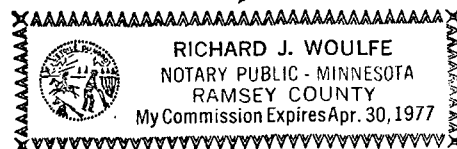
On this 12th day of JUNE 1975, before me personally appeared R.W. DOWNING, to me personally known, who, being by me duly sworn, says that he is an ~~Executive Vice President~~^{CHAIRMAN} of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[Notarial Seal]

My Commission expires



STATE OF NEW JERSEY,)
) ss.:
COUNTY OF ESSEX,)

On this . day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL STATE BANK OF NEW JERSEY, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE NO. 2

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
3,000 hp model U30-C diesel-electric locomotive	10	BN5300-5305; 5363-5364; 5384; 5939
	10	BN5835-5839; 5940-5944

SCHEDULE B TO LEASE

<u>Rental Payments</u>	<u>Percentage of Purchase Price*</u>
Payments 1 - 8	3.2856%
Payments 9 - 20	5.0897%
Payments 21 - 30	7.9739%

* As defined in the Security Documentation.

ADJUSTMENT AGREEMENT

AMONG

BURLINGTON NORTHERN INC.

AND

BORG-WARNER EQUITIES CORPORATION
and
PUGET SOUND NATIONAL BANK

Dated as of May 1, 1975

ADJUSTMENT AGREEMENT dated as of May 1, 1975, among BURLINGTON NORTHERN INC. (hereinafter called the Lessee) and BORG-WARNER EQUITIES CORPORATION and PUGET SOUND NATIONAL BANK (hereinafter called the Owners).

WHEREAS the Owners, pursuant to a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement and said trust created thereby being hereinafter called the Trust), propose to authorize and direct First National State Bank of New Jersey (hereinafter called the Lessor) to purchase certain units of railroad equipment (hereinafter called the Equipment or the Units) from General Electric Company (hereinafter called the Builder), pursuant to a Conditional Sale Agreement No. 2 dated as of the date hereof (hereinafter called the Security Documentation) substantially in the form of Exhibit A-1 to the Finance Agreement referred to below; and

WHEREAS the Lessee will lease from the Lessor all the units of the Equipment so purchased, or such lesser number of units of Equipment as are delivered and accepted under the Security Documentation, pursuant to a Lease of Railroad Equipment No. 2 in substantially the form attached to the Security Documentation as Annex C (such lease being hereinafter called the Lease); and

WHEREAS the Lessee has arranged for financing of the Equipment by a limited number of financial institutions (hereinafter called the Investors). Pursuant to such financing arrangement First National Bank of Minneapolis (hereinafter called the Agent) has entered into a Finance Agreement substantially in the form of Exhibit I hereto (hereinafter called the Finance Agreement), with the Investors, pursuant to which the Investors will furnish 67.84993% of the Purchase Price (as defined in the Security Documentation) of the Equipment; and

WHEREAS the security interest of the Builder in the units of Equipment will be conveyed to the Agent pursuant to an assignment of the Security Documentation and the Lease will be assigned to the Agent until the Lessor fulfills all its obligations under the Security Documentation, including payment of the Conditional Sale Indebtedness (as therein defined) and interest thereon, without regard to any limita-

tion of liability of the Lessor contained therein and the Lessee will consent to such assignment of the Lease;

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereto hereby agree as follows:

1. The Trust and the Owners, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code utilizing the "asset depreciation range" of twelve years for the Units prescribed in accordance with section 167(m) of the Code, for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10 I.R.B. 1972-8, taking into account an estimated gross salvage value of 15% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price of such Units as provided in section 167(f) of the Code, employing the double-declining-balance method of depreciation switching to the sum-of-the-years digits method of depreciation when most beneficial to the Trust (such deduction being herein called the ADR Deduction), (ii) deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and (iii) the 10% investment credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to section 38 and related sections of the Code. The Owners agree that they will claim the Investment Credit and will cause the Trust to claim the ADR Deduction and the Interest Deduction to the extent permissible under the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Owners such records as will enable the Owners to determine the extent to which they and the Trust, as the case may be, are entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Trust becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Trust becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Trust; (iii) at all times during the term of the Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Owners within 30 days after receipt of a written demand therefor.

If by reason of any inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or by reason of the termination of the Lease or the Lessee's loss of the right to use the Equipment under the Lease or the sale or other disposition of the interest of the Owners or the Trust in the Equipment after the occurrence of an Event of Default under § 10 of the Lease, or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Owners by the Lessee in connection with any application for ruling of the Internal Revenue Service or otherwise, or, until a favorable Ruling (as hereinafter defined) is received by the Owners, if for any reason the Owners or the Trust, as the case may be, shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall suffer recapture of, all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit, then the rentals for the Units set forth in § 3 of the Lease shall, on the next succeeding rental payment date after written notice to the Lessee by the Owners of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Owners, cause the Owners' after-tax economic and accounting yields and cash flows to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating this transaction) that would have been realized by the Owners if the Owners or the Trust, as the case may be, had been entitled to utilize all the Investment Credit, the ADR Deduction and the Interest Deduction, and the Lessee shall forth-

with pay to the Owners as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America or any other taxing jurisdiction against the Owners or the Trust, as the case may be, attributable to the loss of all or such portion of the Investment Credit, the ADR Deduction or Interest Deduction; provided, however, that such rental rate shall not be so increased if the Owners or the Trust, as the case may be, shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Trust the amounts stipulated under § 7 of the Lease;

(ii) a transfer or other disposition by the Owners or the Trust of any interest in such Unit or the reduction by the Owners or the Trust of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of the Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Owners to claim in a timely manner the Investment Credit, or the Trust to claim in a timely manner the ADR Deduction or the Interest Deduction;

(iv) the failure of the Owners to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable;

(v) any amendment of the Security Documentation without the prior written consent of the Lessee; or

(vi) the failure of the Trust to maintain its tax status as a partnership as a result of any action or failure to act on the part of the Lessor or the Owners.

(v) any amendment of the Security Documentation without the prior written consent of the Lessee; or

(vi) the failure of the Trust to maintain its tax status as a partnership as a result of any action or failure to act on the part of the Lessor or the Owners.

In the event that rental rates under § 3 of the Lease shall be adjusted as provided in the immediately preceding paragraph, applicable casualty values set forth in § 7 of the Lease shall be appropriately adjusted; provided that no such adjustment shall decrease the rental rates or the casualty values set forth in said § 7 below that which is necessary to satisfy the obligation of the Lessor under the Security Documentation (without giving effect to any limitation of liability of the Lessor contained therein).

Prior to or within three months after the execution of the Lease, the Owners and the Lessee will make joint application for and will diligently seek a ruling (hereinafter called the Ruling) from the Internal Revenue Service (hereinafter called the Service) to the effect that, for Federal income tax purposes:

(i) the Trust does not constitute a trust within the meaning of Regulation Section 301.7701-4 and Subchapter J of the Code, and will not be required to file a fiduciary income tax return for Federal income tax purposes;

(ii) the Trust will constitute a partnership within the meaning of sections 7701(a)(2) and 761(a) of the Code and Regulation Section 301.7701-3(a), and not constitute an association taxable as a corporation within the meaning of section 7701(a)(3) of the Code and Regulation Section 301.7701-2, and will be required to file a partnership return of income for Federal income tax purposes;

(iii) the Trust as a partnership, will be required to make all elections required to be made by partnerships and be permitted to make all elections permitted to be made by partnerships under Subchapter K of the Code and the Regulations promulgated thereunder;

(iv) the Lease, under which the units of Equipment will be leased by the Trust to the Lessee, constitutes a lease and not a conditional sale or financing arrangement for Federal income tax purposes;

(v) interest paid by the Trust on the Conditional Sale Indebtedness will be deductible by it, as a partnership, under section 163(a) of the Code;

(vi) the Trust, as a partnership, will be entitled to depreciate the units of Equipment under any method of depreciation prescribed in section 167(b)(1), (2) or (3) of the Code;

(vii) the units of Equipment are described and included in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10, and the Trust, as a partnership, may elect, in accordance with section 167(m) of the Code, to utilize the lower limit of the asset depreciation range of 12 years, prescribed in said Asset Guideline Class in depreciating each unit of Equipment;

(viii) the Owners, as partners in the Trust, will be required to report in their respective Federal corporate income tax returns, their respective shares of the partnership taxable income of said Trust, and to deduct their respective shares of the partnership net loss for Federal income tax purposes, to the extent of their respective bases, for Federal income tax purposes, in the partnership;

(ix) the partnership's basis in the Equipment under Section 1011 of the Code and related sections shall be the purchase price of the Equipment (including the portion financed with nonrecourse debt);

(x) the Equipment qualifies as new Section 38 property and the Trust as a partnership may claim Investment Tax Credit of 10% on its basis in the Equipment;

(xi) the payments to be made by the Lessee under the Lease for the use of the Equipment constitute rent and the Lessee is entitled to a deduction under Section 162(a)(3) of the Code for such payments.

Nothing herein shall preclude the Owners from applying for and seeking such other rulings of the Service not inconsistent with the rulings hereinbefore described as the Owners may deem in their sole discretion advisable. The Lessee will join in the request for the Ruling and will

furnish such documents, records and representations, including, but not limited to, evidence of estimated useful life and estimated residual value of the Equipment, sufficient to support the matters claimed in the request for the Ruling as shall be deemed necessary and appropriate for such request by the Owners.

In the event that any amendment is required hereto or to the Lease or the Security Documentation by the Internal Revenue Service in order to obtain a favorable ruling, the Owners agree to enter into such amendment (or direct the Lessor so to do) upon written request of the Lessee if, in their sole judgment, such amendment does not adversely affect the interests of the Owners in any material respect and the Agent consents thereto. If any such amendment (i) would by its terms require a revision of the rental rates set forth in § 3 of the Lease or the casualty values set forth in § 7 thereof, then such rental rates and casualty values shall be increased or decreased by such amount as, in the reasonable opinion of the Owners, will cause the Owners' after-tax economic and accounting yields and cash flows under the Lease to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating the transaction contemplated hereby and by the Security Documentation) that would have been available to the Owners had such amendment not been necessary, or (ii) would, in the reasonable opinion of the Owners, increase the risks or burdens of the Owners in respect of such contemplated transaction, then the rental rates set forth by § 3 of the Lease and the casualty values set forth in § 7 thereof shall be increased by such amount as, in the reasonable opinion of the Owners, will cause the Owners to be reasonably compensated for such additional risk or burdens (taking into account the assumptions, except for such additional risks or burdens, as utilized by the Owners in originally evaluating such contemplated transaction); provided, however, that no such decrease will reduce the amount of rentals or casualty values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation (without giving effect to any limitation of liability of the Lessor contained therein). The Lessee agrees that it will, at its option, either (i) enter into such amendment and pay such rentals and casualty values as are recalculated as foresaid and provided for therein, or (ii) purchase the interest of the Owners in each Unit then subject to the Lease from the Lessor on the rental payment date next suc-

ceeding the date on which such recalculation is submitted to the Lessee by the Owners for an amount equal to the rental payment or payments in respect of such Units due and payable on such rental payment date (as determined prior to such recalculation of rental) plus a sum equal to the difference between (i) the higher of the "Fair Market Value" (as defined in the Lease) of such Units or the "Casualty Value" of such Units (as determined prior to such recalculation of casualty values in accordance with § 7 of the Lease), and (ii) the balance of the Conditional Sale Indebtedness then remaining unpaid in respect of such Units. If the Lessee exercises its option to purchase the Units, then the Lessee shall assume the obligations of the Lessor under the Security Documentation without regard to any limitations of liability contained therein.

In the event that, due to a change in any law in respect of Federal income taxes or in any regulation issued thereunder enacted (i) after the date of execution of the Lease and on or prior to December 31, 1976, and (ii) taking effect before the later of (x) the date of the receipt of the favorable Ruling or (y) September 8, 1975, the Owners' after-tax economic and accounting yields and cash flows under the Lease shall be increased or decreased as a result thereof, then the rental rates set forth in § 3 of the Lease and the casualty values set forth in § 7 thereof shall be increased or decreased by such amount as, in the reasonable opinion of the Owners, will cause the Owners' after-tax economic and accounting yields and cash flows under the Lease to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating this transaction) that would have been available to the Owners had such law or regulation not changed; provided, however, that if such rental rates and casualty values shall be adjusted as a result of an increase in the Investment Credit then such adjustment shall be calculated in order to apportion equally any benefits from such increase and such adjustment in rental rates shall be applicable for the last 10 rental payments pursuant to § 3 of the Lease, provided, further, in the event that the Federal income tax rate of the Owners is reduced pursuant to a bill introduced before the House Ways and Means Committee before the later of (i) the date a favorable Ruling is received or (ii) September 8, 1975, and such bill is enacted on or prior to December 31, 1976, then the rental rates set forth in § 3 and the casualty values set forth in § 7 of the Lease will be increased in order to apportion equally

between the Owners and the Lessee any and all negative effects on the Owners' after-tax economic and accounting yields and cash flows. It is understood and agreed that no such decrease shall reduce the amount of rentals or casualty values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation without giving effect to any limitation of liability of the Lessor contained therein.

In the event a claim shall be made by the Internal Revenue Service with respect to the disallowance of the Investment Credit, ADR Deduction or Interest Deduction in respect of any Unit, the Owners agree to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time; provided, however, that: (i) within 30 days after notice by the Owners to the Lessee of such claim, the Lessee shall make request that such claim be contested; (ii) the Owners, at their sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at their sole option, either pay (in which event the additional rental provided for in this Paragraph 1 will become due and payable) the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Owners with an opinion of independent tax counsel satisfactory to the Owners to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Owners in a manner satisfactory to them for any liability or loss which the Owners may incur as the result of contesting such claim and shall have agreed to pay the Owners on demand all costs and expenses which the Owners may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements and (B) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable security for such indemnification as may be requested. In the case of any such claim by the Internal Revenue Service referred to above, the Owners agree promptly to notify the Lessee in writing of such claim and agrees not to make payment of the tax

claimed for at least 30 days after the giving of such notice and agree to cooperate with the Lessee in good faith in order to effectively contest any such claim. The Owners will not agree to the release, compromise or settlement of any action or proceeding taken in accordance with this Paragraph 1 by the Owners without the prior written consent of the Lessee.

If the Owners' right to claim all or any part of the full Investment Credit and the Trust's right to claim all or any part of the full ADR Deduction or Interest Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Owners shall release, waive, compromise or settle any claim without the written consent of the Lessee, then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit set forth in § 3 of the Lease shall again become applicable to such Unit and the Owners shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this Paragraph 1 and the rental rate applicable to such Unit pursuant to § 3 of the Lease and (B) any interest and/or penalties paid by the Lessee to the Owners pursuant to the fourth paragraph of this Paragraph 1 over (ii) the difference between (A) an amount equal to interest at the rate of 15% per annum on the amount of any Federal income tax paid by the Owners on account of the disallowance or inability to claim the Investment Credit, ADR Deduction or Interest Deduction on such Unit and (B) the amount of any interest to which the Owners would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Owners promptly on demand.

2. The Owners agree that if the Investors do not furnish their funds to the Agent pursuant to the Finance Agreement so that the Agent may pay on each Closing Date (as defined in the Security Documentation) the amounts owed to the Builder pursuant to Section 4 of the Agreement and

Assignment dated as of May 1, 1975, between the Lessor and the Builder in respect of any Unit, they will pay the amounts which would have otherwise been paid to the Builder pursuant to said Section 4 in respect of such Unit; provided, however, that the Owners shall not be required to pay such amounts unless prior to such payment each of the conditions precedent set forth in the eighth paragraph of Article 4 of the Conditional Sale Agreement as conditions to the payment provided for therein shall have been fulfilled.

If the Owners make such payment as aforesaid, they shall recalculate the rental due and payable by the Lessee pursuant to § 3 of the Lease and the casualty values due pursuant to § 7 thereof in respect of such Unit to amounts satisfactory to the Owners and shall, within 30 days following such Closing Date, submit to the Lessee such recalculated rental and casualty values in respect of such Unit. The Lessee shall have the option to either (i) elect to pay the rentals in respect of such Unit as so recalculated and be obligated in respect of such recalculated casualty values, or (ii) on March 8, 1976, to purchase such Unit from the Lessor for an amount equal to the rental payment or payments in respect of such Unit due and payable on such date (as determined pursuant to such recalculation of rentals), plus a sum equal to the higher of the "Fair Market Value" (as defined in the Lease) of such Unit, or the "Casualty Value" of such Unit as of such date (as determined prior to such recalculation of casualty values in accordance with § 7 of the Lease). The Lessee may make the election referred to in clause (i) of the preceding sentence at any time following such submission of recalculated rentals and casualty values to and including March 8, 1976, by advising the Owners in writing; provided that if the Lessee fails to purchase any such unit on March 8, 1976, in accordance with clause (ii) of such sentence, it shall be deemed to have elected to pay such recalculated rentals and to be obligated in respect of such recalculated casualty values, and from and after such date such recalculated rentals and casualty values shall be in effect.

3. It is understood and agreed that the rental rates set forth in § 3 of the Lease and the casualty values set forth in § 7 of the Lease have been computed on the basis that pursuant to the Security Documentation a group of 10 units of Equipment will be delivered on or prior to July 31, 1975, and settled for on that date and a group of 10 additional units of Equipment will be delivered on

or prior to September 8, 1975, and settled for on that date. In the event that delivery and settlement for any Unit within said groups occurs after the delivery and settlement date for such group (such delivery and settlement not to occur later than September 8, 1975), then the interim rental rates set forth in § 3 of the Lease shall be adjusted to such amount as, in the reasonable opinion of the Owners, will cause the Owners' after-tax economic and accounting yields and cash flows under the Lease to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating this transaction) that would have been available to the Owners had such delivery and settlement not been changed; provided, however, that no such adjustment shall reduce the amount of rentals or casualty values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation without giving effect to any limitation of liability of the Lessor contained therein.

4. The Owners confirm that they have delivered to Peat, Marwick, Mitchell & Co. copies of the assumptions on which they have based their after-tax economic and accounting yields and cash flows in originally evaluating this transaction and agree to furnish to the Lessee a written confirmation by Peat, Marwick, Mitchell & Co. that any rental or casualty value adjustment required under Paragraphs 1 or 3 of this Adjustment Agreement have been made in a manner consistent with such assumptions.

5. All payments to be made by the Lessee under the Lease will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Owners) to the Lessor and the Owners for collection or other charges and will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Owners) to the Lessor and the Owners with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Owners in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Owners have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the

Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by the Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms of the Lease or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for in the Lease. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or upon the Owners solely by reason of their interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Owners or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Owners, adversely affect the title, property or rights of the Lessor and the Owners under the Lease or the Agent under the Security Documentation. The Lessee agrees to give the Owners notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against Lessor directly and paid by the Lessor or the Owners, the Lessee shall reimburse the Lessor or the Owners on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to any correlative provision of the Security Documentation, or the Owners shall become obligated to make payment to the Lessor pursuant to any correlative provisions of the Trust Agreement, not covered by the foregoing paragraph of this Paragraph 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the owners to fulfill completely their obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the

Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Agent in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor promptly upon demand for the amount of such taxes, fees and charges.

In the event that, during the continuance of the Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Paragraph 5, such liability shall continue, notwithstanding the expiration of the Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this Paragraph 5, the Owners hereby authorize and will cause the Lessor to authorize the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Owners harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Owners, submit to the Lessor or the Owners, as the case may be, copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Owners of the Lessee's performance of its duties under this Paragraph 5. The Lessee shall also furnish promptly upon request such data as the Lessor or the Owners reasonably may require to permit the Lessor's or the Owners' compliance with the requirements of taxing jurisdictions.

6. The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Owners and the Agent from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to counsel fees and expenses, patent liabilities,

penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under the Security Documentation, the Finance Agreement or the Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of the Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under the Lease or the expiration or termination of the term of the Lease.

7. Wherever in this Adjustment Agreement reference is made to the consent or request of, or approval, authorization or direction by, the Owners, the same shall mean the consent or request of, or approval, authorization or direction by a majority in interest of the Owners based on the respective interests of the Owners in the Trust Estate under the trust as set forth in Section 1.03 of such Trust Agreement, and no Owner shall be liable to any other Owner in respect of any action taken pursuant thereto.

8. The Lessee's and the Owners' agreement to pay any sums which may become payable pursuant to this Adjustment Agreement shall survive the expiration or other termination of the Lease.

9. This Adjustment Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary for both parties hereto to execute the same counterpart, if each party shall execute and deliver to the other party at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

BURLINGTON NORTHERN INC.,

by

Executive Vice President

BORG-WARNER EQUITIES CORPORATION,

by

Vice President

PUGET SOUND NATIONAL BANK,

by

Vice President

LEASE OF RAILROAD EQUIPMENT NO. 2

Dated as of May 1, 1975

Between

BURLINGTON NORTHERN INC.,

as Lessee,

and

FIRST NATIONAL STATE BANK OF NEW JERSEY, as Trustee
under a Trust Agreement dated as of May 1, 1975,
with Borg-Warner Equities Corporation and Puget
Sound National Bank,

as Lessor.

LEASE OF RAILROAD EQUIPMENT No. 2 dated as of May 1, 1975, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), and FIRST NATIONAL STATE BANK OF NEW JERSEY, a national banking association, acting as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Borg-Warner Equities Corporation and Puget Sound National Bank (said corporation and said bank being hereinafter called the Beneficiaries).

WHEREAS the Lessor is entering into a Conditional Sale Agreement No. 2 dated as of the date hereof with General Electric Company, a New York corporation (hereinafter called the Builder) (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to First National Bank of Minneapolis, a national banking association, acting as agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessor and the parties named in Schedule A thereto (said national banking association, as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS the Lessor is assigning certain of its interests in this Lease to the Vendor pursuant to an Assignment of Lease and Agreement No. 2 dated as of the date hereof; and

WHEREAS the Lessee is entering into a Lessee's Consent and Agreement No. 2 dated as of the date hereof (hereinafter called the Consent) consenting to said assignment of the Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor or otherwise, whether under this Lease, the Security Documentation or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the

Security Documentation. Upon delivery of each Unit, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim and 30 consecutive semiannual payments payable, in arrears, on March 8 and September 8 in each year, commencing September 8, 1975. The interim rental payment payable on September 8, 1975, shall be in an amount equal to .026902% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to the date of such payment. The 30 semiannual rental payments shall each be in an amount equal to the percentage of the Purchase Price of each Unit then subject to this Lease set forth in Schedule B hereto opposite the applicable rental payment date.

The rental payments hereinbefore set forth are subject to adjustment pursuant to the Adjustment Agreement dated as of the date hereof between the Lessee and the Beneficiaries (hereinafter called the Adjustment Agreement, a copy of which is annexed hereto as Annex I); provided, however, that no such adjustment shall reduce the amount of rentals below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation. If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Minneapolis, Minnesota, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal

office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in federal or other immediately available funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to

and property in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in clause (iii) of § 15 hereof in respect of such statement. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiaries) to the Lessor and the Beneficiaries for collection or other charges and will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiaries) to the Lessor and the Beneficiaries with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiaries in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Beneficiaries have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with

or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or upon the Beneficiaries solely by reason of their interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiaries or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Beneficiaries, adversely affect the title, property or rights of the Lessor and the Beneficiaries hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation, or the Beneficiaries shall become obligated to make payment to the Lessor pursuant to any correlative provision of the Trust Agreement, not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiaries to fulfill completely their obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross

receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor promptly upon demand for the amount of such taxes, fees and charges.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Beneficiaries, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiaries of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiaries reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Payment for Casualty Occurrences; Insurance.
In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (or, in the event of a Casualty Occurrence during the period the Units are being returned pursuant to § 14 hereof, on a date 60 days after such Casualty Occurrence) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below.

Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage</u>
September 8, 1975	104.4961%
March 8, 1976	110.1647
September 8, 1976	113.6080
March 8, 1977	115.3587
September 8, 1977	117.5242
March 8, 1978	119.6656
September 8, 1978	115.0638
March 8, 1979	116.7187
September 8, 1979	118.0875
March 8, 1980	117.1975
September 8, 1980	109.2336
March 8, 1981	107.3854
September 8, 1981	105.4941
March 8, 1982	103.3696
September 8, 1982	94.4307
March 8, 1983	92.0493
September 8, 1983	89.5518
March 8, 1984	86.9256
September 8, 1984	84.1787
March 8, 1985	81.2988
September 8, 1985	78.3314
March 8, 1986	72.3834
September 8, 1986	66.2755
March 8, 1987	59.9899
September 8, 1987	53.6445
March 8, 1988	47.3074

<u>Date</u>	<u>Percentage</u>
September 8, 1988	40.8119%
March 8, 1989	34.1573
September 8, 1989	27.3370
March 8, 1990,	20.3703
September 8, 1990 and thereafter	15.0000

The Casualty Values hereinbefore set forth are subject to adjustment pursuant to the Adjustment Agreement, provided that no such adjustment shall reduce the Casualty Values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor). Any insurance proceeds (less expenses of collection) as the result of insurance carried by the Lessee or condemnation payments received by the Vendor in respect of Units suffering a Casualty Occurrence or refund of

Purchase Price by the Builder shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any other insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such insurance proceeds or condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Security Documentation, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. If an event of default has occurred under subparagraph (a) of Article 16 of the Security Documentation and the Lessor has exercised its right to cure such default as set forth therein, the Lessee shall cause to be furnished to the Vendor and the Lessor on the first day of each month thereafter to and including the month following the next succeeding interest payment date as set forth in Article 4 of the Security Documentation an accurate statement setting forth as at the first day of the preceding month the information described in clause (a) above and representing that all other units of Equipment are being maintained in accordance with the third paragraph of § 9 hereof. The Lessor and the Beneficiary shall have the

right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Beneficiary may request during the continuance of this Lease.

The Lessee will furnish the Lessor and the Vendor (i) as soon as available and in any event within 60 days after the end of the quarterly accounting periods in each fiscal year of the Lessee, (a) copies of the condensed balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of revenue, expense and income (forms CBS and RE&I as filed with the Interstate Commerce Commission or any form substituted therefor) of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; and (b) copies of the quarterly reports of the Lessee to its shareholders (ii) as soon as available and in any event within 120 days after the end of each fiscal year of the Lessee copies of the annual report to stockholders, including the balance sheet of the Lessee and of the related statements of income and retained earnings of the Lessee, and certified by the Lessee's independent public accountants; (iii) copies of the Lessee's annual report Form R-1 (or any form substituted therefor) filed with the Interstate Commerce Commission; and (iv) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce

from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees that, at its own cost and

expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

Any and all additions to any Unit (except any communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under the Security Documentation, the Finance Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, which-

ever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder); and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee

shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed on the basis of a 5.59% per annum discount, computed semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over (y) the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 5.59% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent

that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof or pursuant to Article 16 of the Security Documentation, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for

insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor upon prior written consent of the Lessee. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 11 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

So long as the Lessee shall not be in default under this Lease and an event of default shall not have occurred and be continuing under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation, but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the

Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and an event of default shall not have occurred and be continuing under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or

transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Purchase Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or the first two extended terms of this Lease, as the case may be, elect to (a) extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or the then extended term, as the case may be, of this Lease, provided that no such extended term extends beyond September 8, 1993, at a "Fair Market Rental" payable, in arrears, in semiannual payments on March 8 and September 8 in each year of such extended term or (b) to purchase all, but not less than all, the Units covered by this Lease at the end of such original term or any such extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such original term or such extended term of this Lease.

Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the original term or the extended term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Value, as the case may be, of the Units, such amounts shall be determined

in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to

this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§ 15. Representations and Warranties; Opinion of Counsel. The Lessee represents and warrants for the benefit of the Lessor, the Beneficiaries and the Vendor that:

(i) the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation with adequate corporate power to enter into this Lease, the Consent and the Adjustment Agreement;

(ii) this Lease, the Consent and the Adjustment Agreement have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

(iii) prior to the delivery and acceptance of any Unit under this Lease, the Security Documentation (and any assignment thereof) and this Lease (and any assignment hereof) will have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and this Lease and no other filing, recording or deposit (or giving of notice) with any other federal, state

or local government is necessary in order to protect the interests of the Vendor or the Lessor under the Security Documentation or this Lease in and to the Units and this Lease in any state of the United States of America or in the District of Columbia or under this Lease in Canada or any Province thereof;

(iv) no approval is required from any public regulatory body with respect to the entering into or performance of this Lease, the Consent or the Adjustment Agreement;

(v) the entering into and performance of this Lease, the Consent or the Adjustment Agreement will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

(vi) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units;

(vii) at the time of the execution of this Lease, no litigation existed which materially adversely affected the financial condition of the Lessee;

(viii) at the time of the execution of this Lease, no material adverse change has occurred in the condition, financial or otherwise, of the Lessee since December 31, 1974; and

(ix) at the time of the execution of this Lease, no default exists under any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound.

On each Closing Date the Lessee will deliver to the Lessor counterparts of the written opinion of counsel

for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth in clauses (i), (ii), (iii), (iv), (v) and (vi) of the preceding paragraph.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 550 Broad Street, Newark, New Jersey 07102, with a copy to the Beneficiaries addressed to Borg-Warner Equities Corporation, One IBM Plaza, Chicago, Illinois 60611, Attention: Vice President--Leasing Division, and to Puget Sound National Bank, 1119 Pacific, Tacoma, Washington 98402, and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention: R. C. Burton, Jr., Assistant Vice President, Finance Planning,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Adjustment Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section

20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

§ 22. Immunities; No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Beneficiaries, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First National State Bank of New Jersey or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, or the Beneficiaries or on account of any representation, undertaking or agreement of the Lessor or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 23. Agreements for Benefit of Beneficiaries. All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9 and 10 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and any of the Beneficiaries' assigns under the Trust Agreement.

§ 24. Miscellaneous. The Lessee will cause to be furnished to the Vendor promptly after each Closing Date (as defined in the Security Documentation) a schedule, in such

the Lessor and the Beneficiaries

number of counterparts as shall be requested by the Vendor, the Lessor and the Beneficiaries showing the respective amounts of principal and interest payable on the Conditional Sale Indebtedness (as defined in the Security Documentation) on each Payment Date (as defined in the Security Documentation) and promptly after any Casualty Occurrence any such revised schedule required by Article 7 of the Security Documentation.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

BURLINGTON NORTHERN INC.,

by

[Corporate Seal]

Executive Vice President

Attest:

Assistant Secretary

FIRST NATIONAL STATE BANK OF
NEW JERSEY, as Trustee,

by

William B. Schetlock
Vice President

[Corporate Seal]

Attest:

Assistant Cashier

STATE OF MINNESOTA,)
) ss.:
COUNTY OF RAMSEY ,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Executive Vice President of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW JERSEY,)
) ss.:
COUNTY OF ESSEX,)

On this 11 day of June 1975, before me personally appeared William H. Schutt, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL STATE BANK OF NEW JERSEY, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Elsie C. Balke
Notary Public

[Notarial Seal]

My Commission expires

ELSIE C. BALKE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 8, 1978

SCHEDULE A TO LEASE NO. 2

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
3,000 hp model U30-C diesel-electric locomotive	10	BN5300-5305; 5363-5364; 5384; 5939
	10	BN5835-5839; 5940-5944

SCHEDULE B TO LEASE

<u>Rental Payments</u>	<u>Percentage of Purchase Price*</u>
Payments 1 - 8	3.2856%
Payments 9 - 20	5.0897%
Payments 21 - 30	7.9739%

* As defined in the Security Documentation.

ADJUSTMENT AGREEMENT

AMONG

BURLINGTON NORTHERN INC.

AND

BORG-WARNER EQUITIES CORPORATION
and
PUGET SOUND NATIONAL BANK

Dated as of May 1, 1975

ADJUSTMENT AGREEMENT dated as of May 1, 1975, among BURLINGTON NORTHERN INC. (hereinafter called the Lessee) and BORG-WARNER EQUITIES CORPORATION and PUGET SOUND NATIONAL BANK (hereinafter called the Owners).

WHEREAS the Owners, pursuant to a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement and said trust created thereby being hereinafter called the Trust), propose to authorize and direct First National State Bank of New Jersey (hereinafter called the Lessor) to purchase certain units of railroad equipment (hereinafter called the Equipment or the Units) from General Electric Company (hereinafter called the Builder), pursuant to a Conditional Sale Agreement No. 2 dated as of the date hereof (hereinafter called the Security Documentation) substantially in the form of Exhibit A-1 to the Finance Agreement referred to below; and

WHEREAS the Lessee will lease from the Lessor all the units of the Equipment so purchased, or such lesser number of units of Equipment as are delivered and accepted under the Security Documentation, pursuant to a Lease of Railroad Equipment No. 2 in substantially the form attached to the Security Documentation as Annex C (such lease being hereinafter called the Lease); and

WHEREAS the Lessee has arranged for financing of the Equipment by a limited number of financial institutions (hereinafter called the Investors). Pursuant to such financing arrangement First National Bank of Minneapolis (hereinafter called the Agent) has entered into a Finance Agreement substantially in the form of Exhibit I hereto (hereinafter called the Finance Agreement), with the Investors, pursuant to which the Investors will furnish 67.84993% of the Purchase Price (as defined in the Security Documentation) of the Equipment; and

WHEREAS the security interest of the Builder in the units of Equipment will be conveyed to the Agent pursuant to an assignment of the Security Documentation and the Lease will be assigned to the Agent until the Lessor fulfills all its obligations under the Security Documentation, including payment of the Conditional Sale Indebtedness (as therein defined) and interest thereon, without regard to any limita-

tion of liability of the Lessor contained therein and the Lessee will consent to such assignment of the Lease;

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereto hereby agree as follows:

1. The Trust and the Owners, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code utilizing the "asset depreciation range" of twelve years for the Units prescribed in accordance with section 167(m) of the Code, for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10 I.R.B. 1972-8, taking into account an estimated gross salvage value of 15% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price of such Units as provided in section 167(f) of the Code, employing the double-declining-balance method of depreciation switching to the sum-of-the-years digits method of depreciation when most beneficial to the Trust (such deduction being herein called the ADR Deduction), (ii) deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and (iii) the 10% investment credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to section 38 and related sections of the Code. The Owners agree that they will claim the Investment Credit and will cause the Trust to claim the ADR Deduction and the Interest Deduction to the extent permissible under the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Owners such records as will enable the Owners to determine the extent to which they and the Trust, as the case may be, are entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Trust becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Trust becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Trust; (iii) at all times during the term of the Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Owners within 30 days after receipt of a written demand therefor.

If by reason of any inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or by reason of the termination of the Lease or the Lessee's loss of the right to use the Equipment under the Lease or the sale or other disposition of the interest of the Owners or the Trust in the Equipment after the occurrence of an Event of Default under § 10 of the Lease, or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Owners by the Lessee in connection with any application for ruling of the Internal Revenue Service or otherwise, or, until a favorable Ruling (as hereinafter defined) is received by the Owners, if for any reason the Owners or the Trust, as the case may be, shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall suffer recapture of, all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit, then the rentals for the Units set forth in § 3 of the Lease shall, on the next succeeding rental payment date after written notice to the Lessee by the Owners of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Owners, cause the Owners' after-tax economic and accounting yields and cash flows to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating this transaction) that would have been realized by the Owners if the Owners or the Trust, as the case may be, had been entitled to utilize all the Investment Credit, the ADR Deduction and the Interest Deduction, and the Lessee shall forth-

with pay to the Owners as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America or any other taxing jurisdiction against the Owners or the Trust, as the case may be, attributable to the loss of all or such portion of the Investment Credit, the ADR Deduction or Interest Deduction; provided, however, that such rental rate shall not be so increased if the Owners or the Trust, as the case may be, shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Trust the amounts stipulated under § 7 of the Lease;

(ii) a transfer or other disposition by the Owners or the Trust of any interest in such Unit or the reduction by the Owners or the Trust of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of the Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Owners to claim in a timely manner the Investment Credit, or the Trust to claim in a timely manner the ADR Deduction or the Interest Deduction;

(iv) the failure of the Owners to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable;

(v) any amendment of the Security Documentation without the prior written consent of the Lessee; or

(vi) the failure of the Trust to maintain its tax status as a partnership as a result of any action or failure to act on the part of the Lessor or the Owners.

(v) any amendment of the Security Documentation without the prior written consent of the Lessee; or

(vi) the failure of the Trust to maintain its tax status as a partnership as a result of any action or failure to act on the part of the Lessor or the Owners.

In the event that rental rates under § 3 of the Lease shall be adjusted as provided in the immediately preceding paragraph, applicable casualty values set forth in § 7 of the Lease shall be appropriately adjusted; provided that no such adjustment shall decrease the rental rates or the casualty values set forth in said § 7 below that which is necessary to satisfy the obligation of the Lessor under the Security Documentation (without giving effect to any limitation of liability of the Lessor contained therein).

Prior to or within three months after the execution of the Lease, the Owners and the Lessee will make joint application for and will diligently seek a ruling (hereinafter called the Ruling) from the Internal Revenue Service (hereinafter called the Service) to the effect that, for Federal income tax purposes:

(i) the Trust does not constitute a trust within the meaning of Regulation Section 301.7701-4 and Subchapter J of the Code, and will not be required to file a fiduciary income tax return for Federal income tax purposes;

(ii) the Trust will constitute a partnership within the meaning of sections 7701(a)(2) and 761(a) of the Code and Regulation Section 301.7701-3(a), and not constitute an association taxable as a corporation within the meaning of section 7701(a)(3) of the Code and Regulation Section 301.7701-2, and will be required to file a partnership return of income for Federal income tax purposes;

(iii) the Trust as a partnership, will be required to make all elections required to be made by partnerships and be permitted to make all elections permitted to be made by partnerships under Subchapter K of the Code and the Regulations promulgated thereunder;

(iv) the Lease, under which the units of Equipment will be leased by the Trust to the Lessee, constitutes a lease and not a conditional sale or financing arrangement for Federal income tax purposes;

(v) interest paid by the Trust on the Conditional Sale Indebtedness will be deductible by it, as a partnership, under section 163(a) of the Code;

(vi) the Trust, as a partnership, will be entitled to depreciate the units of Equipment under any method of depreciation prescribed in section 167(b)(1), (2) or (3) of the Code;

(vii) the units of Equipment are described and included in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10, and the Trust, as a partnership, may elect, in accordance with section 167(m) of the Code, to utilize the lower limit of the asset depreciation range of 12 years, prescribed in said Asset Guideline Class in depreciating each unit of Equipment;

(viii) the Owners, as partners in the Trust, will be required to report in their respective Federal corporate income tax returns, their respective shares of the partnership taxable income of said Trust, and to deduct their respective shares of the partnership net loss for Federal income tax purposes, to the extent of their respective bases, for Federal income tax purposes, in the partnership;

(ix) the partnership's basis in the Equipment under Section 1011 of the Code and related sections shall be the purchase price of the Equipment (including the portion financed with nonrecourse debt);

(x) the Equipment qualifies as new Section 38 property and the Trust as a partnership may claim Investment Tax Credit of 10% on its basis in the Equipment;

(xi) the payments to be made by the Lessee under the Lease for the use of the Equipment constitute rent and the Lessee is entitled to a deduction under Section 162(a)(3) of the Code for such payments.

Nothing herein shall preclude the Owners from applying for and seeking such other rulings of the Service not inconsistent with the rulings hereinbefore described as the Owners may deem in their sole discretion advisable. The Lessee will join in the request for the Ruling and will

furnish such documents, records and representations, including, but not limited to, evidence of estimated useful life and estimated residual value of the Equipment, sufficient to support the matters claimed in the request for the Ruling as shall be deemed necessary and appropriate for such request by the Owners.

In the event that any amendment is required hereto or to the Lease or the Security Documentation by the Internal Revenue Service in order to obtain a favorable ruling, the Owners agree to enter into such amendment (or direct the Lessor so to do) upon written request of the Lessee if, in their sole judgment, such amendment does not adversely affect the interests of the Owners in any material respect and the Agent consents thereto. If any such amendment (i) would by its terms require a revision of the rental rates set forth in § 3 of the Lease or the casualty values set forth in § 7 thereof, then such rental rates and casualty values shall be increased or decreased by such amount as, in the reasonable opinion of the Owners, will cause the Owners' after-tax economic and accounting yields and cash flows under the Lease to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating the transaction contemplated hereby and by the Security Documentation) that would have been available to the Owners had such amendment not been necessary, or (ii) would, in the reasonable opinion of the Owners, increase the risks or burdens of the Owners in respect of such contemplated transaction, then the rental rates set forth by § 3 of the Lease and the casualty values set forth in § 7 thereof shall be increased by such amount as, in the reasonable opinion of the Owners, will cause the Owners to be reasonably compensated for such additional risk or burdens (taking into account the assumptions, except for such additional risks or burdens, as utilized by the Owners in originally evaluating such contemplated transaction); provided, however, that no such decrease will reduce the amount of rentals or casualty values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation (without giving effect to any limitation of liability of the Lessor contained therein). The Lessee agrees that it will, at its option, either (i) enter into such amendment and pay such rentals and casualty values as are recalculated as foresaid and provided for therein, or (ii) purchase the interest of the Owners in each Unit then subject to the Lease from the Lessor on the rental payment date next suc-

ceeding the date on which such recalculation is submitted to the Lessee by the Owners for an amount equal to the rental payment or payments in respect of such Units due and payable on such rental payment date (as determined prior to such recalculation of rental) plus a sum equal to the difference between (i) the higher of the "Fair Market Value" (as defined in the Lease) of such Units or the "Casualty Value" of such Units (as determined prior to such recalculation of casualty values in accordance with § 7 of the Lease), and (ii) the balance of the Conditional Sale Indebtedness then remaining unpaid in respect of such Units. If the Lessee exercises its option to purchase the Units, then the Lessee shall assume the obligations of the Lessor under the Security Documentation without regard to any limitations of liability contained therein.

In the event that, due to a change in any law in respect of Federal income taxes or in any regulation issued thereunder enacted (i) after the date of execution of the Lease and on or prior to December 31, 1976, and (ii) taking effect before the later of (x) the date of the receipt of the favorable Ruling or (y) September 8, 1975, the Owners' after-tax economic and accounting yields and cash flows under the Lease shall be increased or decreased as a result thereof, then the rental rates set forth in § 3 of the Lease and the casualty values set forth in § 7 thereof shall be increased or decreased by such amount as, in the reasonable opinion of the Owners, will cause the Owners' after-tax economic and accounting yields and cash flows under the Lease to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating this transaction) that would have been available to the Owners had such law or regulation not changed; provided, however, that if such rental rates and casualty values shall be adjusted as a result of an increase in the Investment Credit then such adjustment shall be calculated in order to apportion equally any benefits from such increase and such adjustment in rental rates shall be applicable for the last 10 rental payments pursuant to § 3 of the Lease, provided, further, in the event that the Federal income tax rate of the Owners is reduced pursuant to a bill introduced before the House Ways and Means Committee before the later of (i) the date a favorable Ruling is received or (ii) September 8, 1975, and such bill is enacted on or prior to December 31, 1976, then the rental rates set forth in § 3 and the casualty values set forth in § 7 of the Lease will be increased in order to apportion equally

between the Owners and the Lessee any and all negative effects on the Owners' after-tax economic and accounting yields and cash flows. It is understood and agreed that no such decrease shall reduce the amount of rentals or casualty values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation without giving effect to any limitation of liability of the Lessor contained therein.

In the event a claim shall be made by the Internal Revenue Service with respect to the disallowance of the Investment Credit, ADR Deduction or Interest Deduction in respect of any Unit, the Owners agree to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time; provided, however, that: (i) within 30 days after notice by the Owners to the Lessee of such claim, the Lessee shall make request that such claim be contested; (ii) the Owners, at their sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at their sole option, either pay (in which event the additional rental provided for in this Paragraph 1 will become due and payable) the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Owners with an opinion of independent tax counsel satisfactory to the Owners to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Owners in a manner satisfactory to them for any liability or loss which the Owners may incur as the result of contesting such claim and shall have agreed to pay the Owners on demand all costs and expenses which the Owners may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements and (B) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable security for such indemnification as may be requested. In the case of any such claim by the Internal Revenue Service referred to above, the Owners agree promptly to notify the Lessee in writing of such claim and agrees not to make payment of the tax

claimed for at least 30 days after the giving of such notice and agree to cooperate with the Lessee in good faith in order to effectively contest any such claim. The Owners will not agree to the release, compromise or settlement of any action or proceeding taken in accordance with this Paragraph 1 by the Owners without the prior written consent of the Lessee.

If the Owners' right to claim all or any part of the full Investment Credit and the Trust's right to claim all or any part of the full ADR Deduction or Interest Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Owners shall release, waive, compromise or settle any claim without the written consent of the Lessee, then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit set forth in § 3 of the Lease shall again become applicable to such Unit and the Owners shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this Paragraph 1 and the rental rate applicable to such Unit pursuant to § 3 of the Lease and (B) any interest and/or penalties paid by the Lessee to the Owners pursuant to the fourth paragraph of this Paragraph 1 over (ii) the difference between (A) an amount equal to interest at the rate of 15% per annum on the amount of any Federal income tax paid by the Owners on account of the disallowance or inability to claim the Investment Credit, ADR Deduction or Interest Deduction on such Unit and (B) the amount of any interest to which the Owners would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Owners promptly on demand.

2. The Owners agree that if the Investors do not furnish their funds to the Agent pursuant to the Finance Agreement so that the Agent may pay on each Closing Date (as defined in the Security Documentation) the amounts owed to the Builder pursuant to Section 4 of the Agreement and

Assignment dated as of May 1, 1975, between the Lessor and the Builder in respect of any Unit, they will pay the amounts which would have otherwise been paid to the Builder pursuant to said Section 4 in respect of such Unit; provided, however, that the Owners shall not be required to pay such amounts unless prior to such payment each of the conditions precedent set forth in the eighth paragraph of Article 4 of the Conditional Sale Agreement as conditions to the payment provided for therein shall have been fulfilled.

If the Owners make such payment as aforesaid, they shall recalculate the rental due and payable by the Lessee pursuant to § 3 of the Lease and the casualty values due pursuant to § 7 thereof in respect of such Unit to amounts satisfactory to the Owners and shall, within 30 days following such Closing Date, submit to the Lessee such recalculated rental and casualty values in respect of such Unit. The Lessee shall have the option to either (i) elect to pay the rentals in respect of such Unit as so recalculated and be obligated in respect of such recalculated casualty values, or (ii) on March 8, 1976, to purchase such Unit from the Lessor for an amount equal to the rental payment or payments in respect of such Unit due and payable on such date (as determined pursuant to such recalculation of rentals), plus a sum equal to the higher of the "Fair Market Value" (as defined in the Lease) of such Unit, or the "Casualty Value" of such Unit as of such date (as determined prior to such recalculation of casualty values in accordance with § 7 of the Lease). The Lessee may make the election referred to in clause (i) of the preceding sentence at any time following such submission of recalculated rentals and casualty values to and including March 8, 1976, by advising the Owners in writing; provided that if the Lessee fails to purchase any such unit on March 8, 1976, in accordance with clause (ii) of such sentence, it shall be deemed to have elected to pay such recalculated rentals and to be obligated in respect of such recalculated casualty values, and from and after such date such recalculated rentals and casualty values shall be in effect.

3. It is understood and agreed that the rental rates set forth in § 3 of the Lease and the casualty values set forth in § 7 of the Lease have been computed on the basis that pursuant to the Security Documentation a group of 10 units of Equipment will be delivered on or prior to July 31, 1975, and settled for on that date and a group of 10 additional units of Equipment will be delivered on

or prior to September 8, 1975, and settled for on that date. In the event that delivery and settlement for any Unit within said groups occurs after the delivery and settlement date for such group (such delivery and settlement not to occur later than September 8, 1975), then the interim rental rates set forth in § 3 of the Lease shall be adjusted to such amount as, in the reasonable opinion of the Owners, will cause the Owners' after-tax economic and accounting yields and cash flows under the Lease to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Owners in originally evaluating this transaction) that would have been available to the Owners had such delivery and settlement not been changed; provided, however, that no such adjustment shall reduce the amount of rentals or casualty values below that which is necessary to satisfy the obligations of the Lessor under the Security Documentation without giving effect to any limitation of liability of the Lessor contained therein.

4. The Owners confirm that they have delivered to Peat, Marwick, Mitchell & Co. copies of the assumptions on which they have based their after-tax economic and accounting yields and cash flows in originally evaluating this transaction and agree to furnish to the Lessee a written confirmation by Peat, Marwick, Mitchell & Co. that any rental or casualty value adjustment required under Paragraphs 1 or 3 of this Adjustment Agreement have been made in a manner consistent with such assumptions.

5. All payments to be made by the Lessee under the Lease will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Owners) to the Lessor and the Owners for collection or other charges and will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Owners) to the Lessor and the Owners with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Owners in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Owners have their principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the

Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by the Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms of the Lease or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for in the Lease. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or upon the Owners solely by reason of their interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Owners or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Owners, adversely affect the title, property or rights of the Lessor and the Owners under the Lease or the Agent under the Security Documentation. The Lessee agrees to give the Owners notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against Lessor directly and paid by the Lessor or the Owners, the Lessee shall reimburse the Lessor or the Owners on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to any correlative provision of the Security Documentation, or the Owners shall become obligated to make payment to the Lessor pursuant to any correlative provisions of the Trust Agreement, not covered by the foregoing paragraph of this Paragraph 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the owners to fulfill completely their obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the

Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Agent in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor promptly upon demand for the amount of such taxes, fees and charges.

In the event that, during the continuance of the Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Paragraph 5, such liability shall continue, notwithstanding the expiration of the Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this Paragraph 5, the Owners hereby authorize and will cause the Lessor to authorize the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Owners harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Owners, submit to the Lessor or the Owners, as the case may be, copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Owners of the Lessee's performance of its duties under this Paragraph 5. The Lessee shall also furnish promptly upon request such data as the Lessor or the Owners reasonably may require to permit the Lessor's or the Owners' compliance with the requirements of taxing jurisdictions.

6. The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Owners and the Agent from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to counsel fees and expenses, patent liabilities,

penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under the Security Documentation, the Finance Agreement or the Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of the Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under the Lease or the expiration or termination of the term of the Lease.

7. Wherever in this Adjustment Agreement reference is made to the consent or request of, or approval, authorization or direction by, the Owners, the same shall mean the consent or request of, or approval, authorization or direction by a majority in interest of the Owners based on the respective interests of the Owners in the Trust Estate under the trust as set forth in Section 1.03 of such Trust Agreement, and no Owner shall be liable to any other Owner in respect of any action taken pursuant thereto.

8. The Lessee's and the Owners' agreement to pay any sums which may become payable pursuant to this Adjustment Agreement shall survive the expiration or other termination of the Lease.

9. This Adjustment Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary for both parties hereto to execute the same counterpart, if each party shall execute and deliver to the other party at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

BURLINGTON NORTHERN INC.,

by

Executive Vice President

BORG-WARNER EQUITIES CORPORATION,

by

Vice President

PUGET SOUND NATIONAL BANK,

by

Vice President